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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 618

JAMES H. QUARLES,

Petitioner,

v.

THE STATE BAR OF TEXAS, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

As stated by Petitioner (Pet. p. 4), Respondents obtained an injunction in February, 1958, generally restraining Petitioner from soliciting employment within the State of Texas for the presentation, handling and prosecution of claims and lawsuits against other parties involved in accidents or automobile collisions. This judgment was reformed and affirmed by the Court of Civil Appeals of Texas, in October, 1958. (Pet. p. 4)

For a period of more than two years Petitioner repeatedly and deliberately violated this injunction. Respondents Filed a motion in June, 1961, seeking to have Petitioner adjudged guilty of civil contempt. To the motion for contempt Respondents attached sworn statements by eight witnesses who had personal knowledge of the acts done

by Petitioner which constituted violations of the injunction. None of Respondents had such personal knowledge, and thus none was qualified to make any sworn statements.

Based upon the Motion and attached Affidavits, the Trial Court issued a Show Cause Order and Petitioner was duly cited to appear to show cause why he should not be held in contempt. After more than ample notice, a full hearing was held before the court on August 14, 1961, at which Petitioner was represented by counsel, and during which the right of cross-examination was fully afforded Petitioner. Petitioner testified in his own behalf but chose to call no other witnesses. Following the finding on August 16, 1961, that Petitioner was guilty of three acts of contempt, Petitioner immediately applied for a writ of habeas corpus to the Supreme Court of Texas. After the points raised by the petition were "duly considered by the Court," the petition was denied. (Pet. p. 12).

ARGUMENT

None of the "Questions Presented" (Pet. p. 2, 3), as suggested by Petitioner, is raised by the record in this case, and none present matters which should be considered by this Court. Petitioner has tortured the facts and findings in the courts below, and has added claims of alleged violations of federal rights not mentioned in the courts below, all in an attempt to construct a federal question to present to this Court.

Petitioner's first "question presented" assumes, with no basis in the record, that Respondent was "exempted" by the courts of Texas from their established rules of procedure. In fact, however, the Trial Court (S.F. 4-6) expressly held that Respondents had complied with the rule, and this finding was upheld by the Supreme Court of Texas

when it overruled this point in Petitioner's application for writ of habeas corpus. Respondents did everything possible to comply with the rule in presenting with the complaint affidavits of the only persons who had personal knowledge of Petitioner's acts. The findings by the Texas courts that this method was sufficient verification are in accord with the established law of Texas, based upon an earlier decision in which the identical method of verification was used, *Texas Finance & Thrift Ass'n* v. *State*, 224 S.W. 2d 522 (Tex. Civ. App. 1949). The reference by Petitioner to a request that Respondents verify the complaint "on information and belief" has no merit, since Texas decisions without exception hold that such a verification adds nothing to a pleading. If Respondents had not already sufficiently complied with the requirement of verification, an additional verification on information and belief would not have helped. *Graham* v. *McCarty*, 69 Tex. 323, 7 S.W. 342 (1887); *Ex Parte Pease*, 123 Tex. Cr. R. 43, 57 S.W. 2d 575 (1933); *Cantrell* v. *Carlson*, 313 S.W. 2d 624 (Tex. Civ. App. 1958); 33 Tex. Jur. 549, Pleading § 116. Indeed Counsel for Petitioner asserted this very proposition in his opening statement to the Court. See S.F. 3.

Further, if the Texas courts had been in error in holding that Respondents complied with the rule, such error would not have presented any issue of denial of Due Process under the United States Constitution for consideration by this Court. The requirements of Due Process in contempt proceedings have been discussed frequently by this Court, and it has been stated that no particular method of procedure is required as long as the defendant is advised of the charges against him, has a reasonable opportunity to meet them by way of defense or explanation, has the right to be represented by counsel, and has a chance to testify and call witnesses in his behalf. *Re Oliver*, 333

U. S. 257 (1948); *Cooke* v. *United States*, 267 U. S. 517 (1925); *Camarota* v. *United States*, 111 F. 2d 243 (3 Cir. 1940) cert. denied, 311 U.S. 651 (1940). It is clear that Due Process does *not* require that the complaint in a contempt proceeding be verified. No such verification is provided for or required under federal practices, 18 U.S.C. §401; *Laughlin* v. *United States*, 151 F. 2d 281 (D.C. Cir. 1945) cert. denied 326 U.S. 777 (1945); and the Supreme Court of Texas has held in a carefully considered and well reasoned opinion that Due Process does not require a verified complaint. *Ex Parte Winfree*, 153 Tex. 12, 263 S.W. 2d 154 (1953).

In *Simon* v. *Craft*, 182 U. S. 427 (1901), this Court passed upon a claim that Due Process had been denied by an alleged defect in a petition presented in the state court. In overruling the point, this Court stated, through Mr. Justice White:

> "If the essential requisites of full notice and an opportunity to defend were present, this court will accept the interpretation given by the state court as to the regularity, under the state statute, of the practice pursued in the particular case. Tested by these principles, *we accept as conclusive the ruling of the supreme court of Alabama . . . that the petition was in compliance with the statute. . . .*" 182 U. S. 437. (Emphasis added.)

The record distinctly shows that all of the requirements of Due Process in a contempt proceeding, as set out above, were met in this case. Therefore, the finding by the Supreme Court of Texas that Respondents did comply with the procedural rule is conclusive and should be accepted by this Court.

Further, this Court has repeatedly held that any error by a state court such as the one alleged by Petitioner does

not deprive a litigant of Due Process. Merely an erroneous construction of a state's own statute is not a denial of Due Process. *Neblett* v. *Carpenter*, 305 U. S. 297 (1938); *American Railway Exp. Co.* v. *Kentucky*, 273 U. S. 269 (1927).

Finally, Petitioner's first "question presented" complains of a denial of Due Process *for the first time* in this Court. At no stage of the proceedings below did Petitioner raise any point relating to a denial of Due Process because of an alleged defect in the verification. His present attempt to raise such a point comes too late and thus presents a matter over which this Court has no jurisdiction. *American Surety Co.* v. *Baldwin*, 287 U. S. 156 (1932).

Therefore, Petitioner's first "question presented" contains nothing calling for review by this Court, because the finding by the Texas courts that Respondents complied with the applicable rule of procedure is clearly correct and the only finding the Court could have made in harmony with sound common sense, because such finding, if erroneous, would present no question of a denial of Due Process; and because Petitioner failed to raise the point of a denial of Due Process at any time in the courts below.

The second "question presented" by Petitioner is not deserving of consideration by this Court, since the law applicable to this question has been established and settled by this Court, contrary to Petitioner's position; and since, in any event, Petitioner has failed to raise this point properly in the Texas courts, and has thus waived it.

Petitioner here complains of the injunction against him entered in October, 1958, insofar as it enjoins him from "soliciting employment within the State of Texas . . . for the presentation, handling and prosecution of claims and lawsuits against other parties involved in accidents. . . ." The wording of this portion of the injunction is almost

identical to a portion of Article 430, Texas Penal Code, which provides in part as follows:

> "Whoever . . . shall seek to obtain employment in any claim to prosecute, defend or collect the same by means of personal solicitation of such employment . . . shall be fined not to exceed five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding three months. The penalties herein prescribed shall apply not only to attorneys at law, but to any other person who may be guilty of any of the things set forth in this article."

This very part of the Texas statute was attacked as being in violation of the 14th Amendment in the case of *McCloskey* v. *Tobin*, 252 U. S. 107 (1920). The defendant, a layman, had been convicted under the statute for soliciting employment to collect two claims. He alleged that the prohibition of the statute violated his rights of liberty and property, and denied him equal protection of the laws, because the business of obtaining adjustment of claims is not inherently evil and because, since causes of action are assignable, they are articles of commerce. This Court, speaking through Mr. Justice Brandeis, unanimously upheld the validity of such regulation as follows:

> "The contention may be answered briefly. To prohibit solicitation is to regulate the business, not to prohibit it. (Citing authorities). The evil against which the regulation is directed is one from which the English law has long sought to protect the community through proceedings for barratry and champerty. (Citing authorities). *Regulation which aims to bring the conduct of the business into harmony with ethical practice of the legal profession, to which it is necessarily related, is obviously reasonable.*" (Emphasis added).

This decision clearly forecloses the contentions raised by Petitioner's second question.

In addition, this second "question presented" should not be considered by this Court because Petitioner cannot make a collateral attack upon the validity of the injunction. Any question as to the validity of the injunction should have been raised by Petitioner several years earlier, at the time of the injunction proceedings in 1958. No such attack can be levied at *any* stage of a proceeding for contempt for violation of the injunction. This rule was clearly set forth by this Court in the case of *Howat* v. *Kansas*, 258 U. S. 181 (1922), as follows:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the Court may be, even if the error be in the assumption of the validity of a seeming but void law, going to the merits of the case. *It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.*" (Emphasis added).

Further, even if the question of the validity of the injunction could have been raised during proceedings for contempt, Petitioner failed to raise the question in any manner during the contempt hearing, and mentioned it for the first time in his application for writ of habeas corpus to the Supreme Court of Texas. Since the point was not properly raised in the Texas courts, this Court has no jurisdiction to consider the question, even if it had merit. *American Surety Co.* v. *Baldwin*, 287 U. S. 156 (1932).

Petitioner's third "question presented" is nothing more than an allegation that the evidence was insufficient to sustain the judgment of the Trial Court. This point presents no basis for review by this Court, because the allegation suggests no federal question over which this Court has jurisdiction, and because the record clearly shows that the findings of the Trial Court were fully established by the evidence.

As was stated by this Court in the case of *Bell Telephone Co.* v. *Public Util. Comm.*, 309 U. S. 30 (1940), the claim that the state appellate courts were in error in finding that the evidence was sufficient to sustain the findings of the trial court does not present a federal question. And, in *Norton Co.* v. *Department of Rev.*, 340 U. S. 534 (1951), a case on writ of certiorari to the Supreme Court of Illinois, this Court stated that it will not "re-examine, as a court of first instance, findings of fact supported by substantial evidence." These principles are applicable in the present case, and there is no reason for this Court to pass on the question of sufficiency of the evidence.

Further, this question should not be considered by this Court because the record so clearly shows that there was overwhelming evidence to establish the facts of violations of the injunction by Petitioner. This case involves acts of *civil* contempt, and thus the proof need not establish the violations by Petitioner "beyond a reasonable doubt." *Oriel* v. *Russell*, 278 U. S. 358 (1929); 9 Wigmore on Evidence, 3rd ed. 325, §2498. Nevertheless, even applying the standard sought to be imposed by Petitioner, it is established by the record that the evidence does support the findings of violations "beyond a reasonable doubt."

All of the witnesses testified that Petitioner approached them without being requested by them to do so. (S. F. 14,

17, 33, 41, 57, 58). Three of the four witnesses were contacted by Petitioner soon after being injured, while they were still in the hospital. (S. F. 33, 41, 57). All of them likewise testified that they had never known Petitioner prior to being contacted by him. (S. F. 14, 33, 41, 57). Mr. Byers specifically testified that Petitioner solicited the case (S. F. 15), and that later Petitioner even brought a petition to him, and suggested that he file suit in his own behalf (S. F. 18). Both Mr. Byers and his wife testified that Petitioner represented to them that he would obtain a good settlement for them (S. F. 15, 24, 30, 31, 33, 34) and that he could handle the case much better than they could. (S. F. 15, 24, 34) The record is filled with testimony by all the witnesses of instances when Petitioner, without being requested to do so, sought to obtain a lawyer for them. (S. F. 16, 18, 19, 24, 30, 31, 43, 44, 49, 60) Petitioner even took Mr. Odom to an attorney for this purpose. (S. F. 60) The record shows that a suit was filed without the permission of Mr. and Mrs. Byers, by an attorney contacted by Petitioner. (S. F. 20-23, 36, 37). Mr. Hennech testified that Petitioner sought to persuade him to allow an attorney chosen by Petitioner to represent him, and even insisted that Mr. Hennech dismiss his own attorney (S. F. 43, 44, 46, 49, 54). Petitioner suggested to Mrs. Byers and Mr. Odom that he would hire a doctor for them (S. F. 34, 58) and he even took Mr. Odom to see a doctor. (S. F. 60).

The evidence supporting the findings that Petitioner did solicit employment from all of these witnesses for the presentation, handling and prosecution of a claim and lawsuit is so overwhelming that Petitioner's third "question presented" has no merit.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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